IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (WCA) No.426 of 2002

Judgment reserved on: 2.1.2006.

Date of decision: 11th Jan. 2006.

National Insurance Company Ltd. …..Appellant

-Versus-

Dhannu Ram and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? yes

For the Appellants: Mr.Ashwani Sharma, Advocate

For Respondent-1: Mr.Ramakant Sharma, Advocate

Deepak Gupta, J.

This appeal by the Insurance Company has been filed under Section 30 of the Workmen's Compensation Act. The appeal was admitted on the following questions of law:

> "i)Whether the claimant is entitled to claim compensation under the Workmen's Compensation Act in case the accident of deceased workman was not arising out of and in the course of the employment and there is no proximate nexus between the death and employment in which the deceased was engaged?
>
> ii)Whether the liability for payment of amount of compensation arises under the Workmen's Compensation Act against the insurance-Company in a motor policy in case the death of deceased workman is not in any manner related to the insured vehicle?"

Briefly stated the facts of the case are that deceased Hoshiar Singh was employed as driver by Usha Rani on her truck No.HP-12-9039 on a monthly salary of Rs.2500/-. It is alleged that on 2.10.2000

the truck was to be taken outside Baddi. The truck was loaded and parked near truck union Baddi where it was being repaired. The mechanic asked for some parts and Hoshiar Singh went on a scooter to get the parts. When he was returning alongwith the spare parts he met with an accident with truck No.HP-51-0127. He was taken to PGI but unfortunately died on the same day i.e. 2.10.2000. The petition was filed by the father of the deceased. The employer Usha Rani admitted the fact that deceased was employed by her and he died during the course of employment. The Insurance Company took up various pleas. One of the pleas taken was that the coverage with regard to the deceased was only as a driver and the accident in question did not occur during the course of employment and hence it is not liable. The Commissioner Workmen's Compensation, Nalagarh vide his award dated 8.4.2002 in case No.4 of 2001 has awarded compensation of Rs.2,18,470/- in favour of the claimant and hence the Insurance Company was held liable to pay the same. Hence, the present appeal by the Insurance Company.

The main contention of Mr.Ashwani Sharma, learned counsel for the Insurance Company is that the deceased was not working as a driver when the accident occurred. He submits that it was no part of the job of the driver to bring the spare parts from the shop and, therefore, according to him the accident did not occur during the course of employment. Mr.Sharma further argues that the claimant should have filed a petition under the Motor Vehicles Act and not under the Workmen's Compensation Act.

Section 167 of the Motor Vehicles Act gives an option to the claimant to file proceedings either under the Motor Vehicles Act or

under the Workmen's Compensation Act if a claim arises out of and during the course of employment. However, no claimant can claim compensation under both the Acts. It is for the claimant to exercise this option and the Insurance Company cannot dictate as to which option the claimant should opt.

Mr.Ashwani Sharma has placed reliance on the judgment of the High Court of Madras in **New India Assurance Co. Ltd. Vs.A.Sharifa Bivi and others**, 2002 ACJ 378. In that case the driver had collected rent from some third parties as per the directions of the owner of the vehicle. Thereafter, he was proceeding on his cycle when he was hit by a vehicle. The Madras High Court on interpretation of Section 147 of the Motor Vehicles Act held that the deceased met with his death only while he was proceeding from his house to collect the rent. Therefore, according to the Madras High Court the accident occurred not while the deceased was performing his duties but while discharging some other work on the direction of the employer. According to the Madras High Court the Insurance company is liable only when the driver is engaged and driving the vehicle.

On the other hand Mr.Ramakant Sharma, has relied upon a judgment of the Rajasthan High Court in **Nav Bharat Rice & General Mills vs. Rukma Devi,** 1993 ACJ 183. There the Chowkidar had gone on the motorcycle belonging to the Mill to get labourers. The employer took up the plea that it is not part of the duty of the chowkidar to bring the labourers. The Court held that once the employer asked him to do a certain job the employer was bound to do the same and if there is any relationship with his work the employer was liable.

In my opinion the view taken by the Madras High Court is extremely strict. Will the liability of the employer or Insurance Company arise only in case the driver is actually driving the vehicle and in no other event? Similarly in the case of a conductor if the interpretation given by the Madras High Court is followed the Insurance Company would only be liable when the person is working as a conductor or examining the tickets. In my view the intention of Section 147 of the Motor Vehicles Act is to give the nature of employment of the employees who are required to be covered under the Act. A driver may have to perform duties other than just driving the vehicle. Supposing the driver is engaged in changing a punctured tyre of the vehicle and is hit by another vehicle can the employer or the Insurance Company say that it is not liable since the deceased was not actually driving the vehicle at that time? In my view the answer has to be in the negative. However, the work which the employee is doing i.e. the driver is doing must be some work which is related to his employment as driver. Obviously as held by the Madras High Court, collection of rent is no part of the duty of the driver. However, it is the duty of the driver to see that a vehicle under his control is properly maintained. If the vehicle is being repaired and the driver has to get some spare parts for the vehicle, it would be part of his duty. It cannot be said that the job of the driver begins and ends at the steering wheel only. Maintenance of the vehicle is also part of the job of a driver.

In the present case there is sufficient evidence to show that the mechanic who was repairing the vehicle had asked for some spare parts. The driver alongwith the husband of the owner had gone to purchase

the spare parts. Thereafter, the driver was returning with the spare parts on the scooter when he unfortunately met with an accident. This, in my opinion, is an accident which has taken place during the course of employment and arises out of the employment of the deceased.

Both the questions are answered accordingly and it is held that the Insurance Company is liable to pay the compensation.

In view of the above discussion the appeal is dismissed with no order as to costs.

Needless to say the Insurance Company may take steps for recovery of the amount paid by it from the tort-feasor under Section 13 of the Workmen's Compensation Act.

January 11, 2006. **(Deepak Gupta),**
PV **Judge**